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EXAMINER

SAGER, MARK ALAN

ART UNIT

PAPER NUMBER

3714

NOTIFICATION DATE

DELIVERY MODE

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ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@wavsip.com

Office Action Summary	Application No. 10/659,827	Applicant(s) ROWE, RICHARD E.	
	Examiner M. Sager	Art Unit 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-50,61-66,71 and 72 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-50,61-66, 71 and 72 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>11/12/09</u> . | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/28/09 has been entered. The submission amends claims 19, 32 and 61, adds two new claims (renumbered) and cancels claims 47-48.

Information Disclosure Statement

2. The information disclosure statement filed 9/28/09 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because reference data with regards to PG-Pub 2002/0142845 does not match PTO records since that reference is to Randall et al. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a). Regarding other references lined through, the references were previously considered as indicated on 1449s dated 2/17/09 and 4/29/08; while the other documents listed as elements 26 and 33 pertain to allowed claims of inventor related patents previously of record as having been considered and thus are redundant entries.

Claim Objections

3. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 67 and 68 have been renumbered 71 and 72 respectively per cancelling of claims 67 and 68 in Preliminary amendment filed 9/10/03.

Claim Interpretation

4. Per MPEP 2111.04, claim scope is not limited by claim language that suggests or makes optional but does not require steps to be performed, or by claim language that does not limit a claim to a particular structure. However, examples of claim language, although not exhaustive, that may raise a question as to the limiting effect of the language in a claim are (A) “adapted to” or “adapted for” clauses, (B) “wherein” clauses, and (C) “whereby” clauses. The determination of whether each of these clauses is a limitation in a claim depends on the specific facts of the case. In *Hoffer v. Microsoft Corp.*, 405 F.3d 1326, 1329, 74 USPQ2d 1481, 1483 (Fed. Cir. 2005), the court held that when a “whereby” clause states a condition that is material to patentability, it cannot be ignored in order to change the substance of the invention.” *Id.* However, the court noted (quoting *Minton v. Nat’l Ass’n of Securities Dealers, Inc.*, 336 F.3d 1373, 1381, 67 USPQ2d 1614, 1620 (Fed. Cir. 2003)) that a “whereby clause in a method claim is not given weight when it simply expresses the intended result of a process step positively recited.” *Id.* In this case, the ‘wherein’ clauses of claims merely state an environment of use, or

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intended result or the clause fails to state a condition material to its patentability as provided in further evidence below.

5. Per MPEP 2114, while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also *In re Swinehart*, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971); *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device *is*, not what a device *does*." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original). In this case, the process claimed fails to distinguish over structure of references performing same function for same purpose as in evidence in holdings.

Claim Rejections - 35 USC § 102

6. Claims 19-46, 49-50, 61-66 and 71-72 (as renumbered) are rejected under 35 U.S.C. 102(e) as being anticipated by Wells (6219836, 6488585, 6805634). This holding is maintained from prior Office action mailed May 27, 2009 for cited claims as amended. Response to Applicant/Counsel arguments is provided below and incorporated herein; however, no argument was provided regarding Wells.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37

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CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Wells ('836, '585 and '634) each incorporates by reference Pease ('102, '887). Wells '836 incorporates by reference Wells '585 and '634; Wells '634 incorporates by reference Wells '585; while, Wells '585 incorporates by reference Wells '836.

Wells '634 discloses a method and apparatus for downloading data teaching a gaming machine (ref 112) comprising: a first combination of game software components (abstract, 1:16-60, 4:49-6:65; 10:54-11:4, 13:20), said first combination comprising a plurality of game software components including first game graphics, first game sounds, and game system components wherein the game system components comprise software modules used to provide system functions on the gaming machine (abstract, 1:16-60, 4:49-6:65; 10:54-11:4, 13:20, figs 1A-5, ref 128a-d, 132a-d); a master gaming controller designed or configured to present a game on the gaming machine using the first combination of game software components (1:16-41, microprocessor, ref 122, 1110); a network interface for communicating with a remote server and receiving game software components from said remote server and including a modem and including those instances that WAN is internet (fig 1A-5, ref 124, 322, 1114, 1122, as evidence only per MPEP 2131.01, see definition of WAN from wikipedia.com, sic, and see Internet Basics: 'How information travels online', 'What happens when you go online', 'Making the online connection' and 'How to download files'); processor logic for combining game software components from said first combination with game software components received from said remote server to generate a second combination of game software components including the

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game system components, the second game graphics and the second game sounds, wherein said second combination is used to present a game on the gaming machine (abstract, 1:16-41, 1:48-67, 3:23-26, 30-33, 48-67, 4:8-21, 6:63-65, 10:54-11:4, 13:20, figs 1A-5, i.e. repairing or update gaming terminal software when taken as a whole as interpreted by an artisan at a time prior to invention includes updating, patching, repairing, modifying or adding new content to game software, pay table(s), or bonus game to accommodate new games, regulatory changes, correct bugs or other programming errors or install new features such as to deter fraud or improve graphics/visual or sounds/audio), a memory storing a plurality of game software components wherein the memory is selected from the group consisting of an EPROM, a flash memory a ROM, a RAM, a CD, a DVD, a tape drive, a hard drive and a non-volatile memory (1:16-41, 3:48-67, 4:8-21, 59-61, 5:24-27, 7:16-20, figs 1A-5, ref 1112, 1116), wherein at least one of the plurality of game software components stored in said memory is used to generate the second combination game software components (1:16-41, 6:63-65, 10:54-11:4, figs. 1A-5, implicit game program(s) and peripherals make up components to provide game at game machine whereby to replace or supplement or repairing the gaming terminal software when taken as a whole as interpreted by an artisan at a time prior to invention includes updating game or gaming software/components to accommodate new games, regulatory changes, correct bugs or other programming errors or install new features, sic), a memory storing game software version information for a plurality of game software components (1:16-41, 6:63-65, 8:36-67, 12:3-16, figs 1A-5, implicit), wherein the remote server is a gaming terminal data repository (figs. 1A-5, ref 114, 116, 466, 468, 484, 488, 1108), a firewall (ref 452), wherein the game software components are selected from the group consisting of game system components, game paytables,

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game bonus, game progressives, game graphics, game sounds, game jurisdiction information, game networking components (1:16-41, 1:61-2:17, 3:23-26, 30-33, 48-67, 4:49-6:65, 7:16-20, 8:7-10, 10:49-11:4, 12:3-28, 13:20, figs. 1A-5, implicit for gaming machine providing game(s) to play), wherein the network interface is a wireless network interface or a wired network interface (4:49-5:65, 6:14-65, 12:52-64), wherein the network interface is configured to allow connection of the gaming machine to an internet network or an intranet network where WAN is internet or intranet or where LAN is an intranet (1:16-41, 3:23-26, 30-33, 48-67, 4:49-5:65, 6:14-65, 12:52-64; implicit since WAN includes internet or intranet; while, LAN includes intranet, sic), wherein the intranet network is selected from the group consisting of a cashless system network, a progressive game network, an accounting network and a bonus game network (1:16-41, 3:23-26, 30-33, 48-67, 4:8-21, 4:49-6:65, 8:7-10, 10:54-11:4, figs. 1A-5), wherein the game is a video bingo game, a video lottery game, a video black jack game, a video slot game, a mechanical slot game, a video poker game, a video keno game, a video pachinko game, a video game of chance and a video card game (1:16-41, 13:20); also, in a remote server (fig. 1A-5, ref 114, 116, 466, 468, 484, 488, 1108), a method of modifying game play on a plurality of gaming machines (abstract, 1:16-41, 1:61-2:17, 3:23-26, 30-33, 48-67, 4:8-21, 4:49-6:65, 10:54-11:4, 13:20, fig 1A-5), the method comprising monitoring game performance including coin-in of a first game played on a gaming machine (abstract, 1:16-41, 3:23-26, 30-33, 48-67, 4:8-21, 4:49-6:65, 8:7-10, 10:54-11:4, figs. 1A-5), checking at least update trigger wherein the at least one update trigger comprises a game event, a game performance event, a player input or a combination thereof that by happenstance adding a new game, repairing, updating for regulatory requirement, correcting bugs relate to game performance (abstract, 1:16-41, 1:48-67, 3:23-26, 30-33, 48-67, 4:1-21,

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4:49-6:65, 8:36-9:10, 10:54-12:28, 13:20, figs 1A-5), determining that a configuration update has been triggered based upon at least the update triggers and the game performance of the first game (1:16-41, 1:61-2:17, 2:55-57, 3:23-26, 30-33, 3:48-67, 4:8-20, 4:49-6:65, 7:16-53, 10:54-11:4, 13:20, figs 1A-5); establishing communications with the gaming machine (step 206); when the configuration update has been triggered, identifying one or more game software components for the configuration update on the gaming machine (abstract, 1:16-41, 1:48-67, 3:23-26, 30-33, 48-67, 4:8-21, 4:49-6:65, 10:54-11:4, 11:30-12:28, 13:20, figs 1A-5); bundling the game software components (abstract, 1:16-41, 1:48-67, 3:23-26, 30-33, 48-67, 4:8-21, 4:49-6:65, 9:25-65, 10:54-11:4, 13:20, figs 1A-5 and discussion transmitting or downloading information or data in block fashion that is bundling of the data/information to be downloaded, as evidence only under MPEP 2131.01 see Internet Basics: 'How information travels online', 'What happens when you go online', 'Making the online connection' and 'How to download files'); and sending the game software components to the gaming machine wherein said game software components are used to present a game on the gaming machine (abstract, 1:16-41, 1:48-67, 3:23-26, 30-33, 48-67, 4:8-21, 4:59-6:65, 9:25-11:4, 11:30-12:16, 13:20, figs 1A-5); further comprising prior to sending the game software components, contacting a local ISP and sending the game software components via the local ISP (abstract, 1:16-41, 1:48-67, 3:23-26, 30-33, 48-67, 4:8-21, 4:59-6:65, 10:54-12:28, 13:20, figs 1A-5, implicit where WAN includes internet, noteworthy is customer order over network that further suggests internet), looking up an IP address of said one or more gaming machines (abstract, 1:16-41, 1:48-67, 3:23-26, 30-33, 48-67, 4:8-21, 4:59-6:65, 10:54-12:28, 13:20, figs 1A-5, implicit use of TCP/IP protocol and address of game machine for identification for communication where WAN is internet), encapsulating said game software components in

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multiple information packets (refer to data blocks and bundling above), encrypting said game software components (abstract, 1:16-41, 1:48-67, 3:23-26, 30-33, 48-67, 4:8-21, 4:59-6:65, 8:12-12:28, 13:20, figs 1A-5), generating instructions for configuring the game software components and sending said instructions with said game software components (12:3-16, information file is instruction, implicit, program includes remarks as instructions in readme file, as evidence only under MPEP 2131.01 see documentation section in Internet Basics: 'How to download files' or, see Marron 5359730, abstract; programs typically include such remarks/instruction for guidance of use or of changes in update/patch notes that is hornbook engineering for programming a change/update as to be implicitly included), requesting game software component version information from the gaming machines and receiving the game software component version information from the gaming machine (abstract, 1:16-41, 1:48-67, 3:23-26, 30-33, 48-67, 4:8-21, 4:59-6:65, 8:36-9:10, 10:54-12:28, 13:20, figs 1A-5), receiving game transaction information from the gaming machines and storing said game transaction information (5:6-14, 8:7-10), storing said game transaction information according to one or more game data categories wherein the game data categories are selected from the group consisting of game version data, game data, gaming terminal data, player data, route data and venue data (implicit, requirement for tracking credit or game activity according to credit or game type, basic accounting practice), prior to storing said game transaction information, determining access privileges for said game transaction information (implicit as required for credit tracking that entails setting access rights, as evidence only see Pease 5326104 at 18:4-6, 58-63, 19:32-45, 21:15-22:3, 25:29-33, 28:13-31:43), prior to storing said game transaction information, performing one or more operations on said game transaction information (5:6-14, 8:7-10, implicit, as per requirement for tracking credit

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or game play activity so as to associate credit with game played and sum new value with prior value as basic accounting), determining a data storage partition from among a plurality of data storage partitions for storing said gaming transaction information wherein the plurality of data storage partitions correspond to a plurality of gaming entities where the plurality of gaming entities is players such as for player tracking for compensation in a loyalty program (5:6-14, 8:7-10, as evidence only under MPEP 2131.01 regarding partitioning accounting data for player tracking in a loyalty program see either Acres 5655961 or Boushy 5761647); further in a gaming machine (13:20, ref 112, 1102), a method of updating game software components (abstract, 1:16-41, 1:48-67, 3:23-26, 30-33, 48-67, 4:59-6:65, 10:54-12:28, fig 1A-5), the method comprising generating a game play on the gaming machine using a first combination of game software components, said first combination of game software components including first game graphics, first game sounds and game system components, wherein the game system components comprise software modules used to provide system functions on the gaming machine (abstract, 1:16-60, 4:49-6:65; 10:54-11:4, 13:20, figs 1A-5, ref 128a-d, 132a-d), establishing communications with a remote server (step 206); receiving game software components from said remote server including second game graphics and second game sounds (abstract, 1:16-41, 1:48-67, 3:23-26, 30-33, 48-67, 4:8-21, 4:59-6:65, 8:36-9:10, 10:54-12:28, 13:20, figs 1A-5); unbundling said game software components (abstract, 1:16-41, 1:48-67, 3:23-26, 30-33, 48-67, 4:8-21, 4:59-6:65, 8:36-9:10, 10:54-12:28, 13:20, figs 1A-5 and discussion throughout regarding transmitting data in block fashion that data block is unbundled at receiving gaming machine, as evidence only under MPEP 2131.01 see Internet Basics: 'How information travels online', 'What happens when you go online', 'Making the online connection' and 'How to download files'); generating a second

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combination of game software components wherein said second combination of game software components comprises game software components from said first combination including the game system components and the game software components received from said remote server including the second game graphics and the second game sounds by happenstance of adding a new [bonus/progressive] game, new content, repairing, updating, correcting bugs or other programming errors or complying with regulatory requirement (abstract, 1:16-60, 4:49-6:65; 10:54-11:4, 13:20, figs 1A-5, ref 128a-d, 132a-d), and presenting a game play using the second combination of game software components (abstract, 1:16-41, 1:48-67, 3:23-26, 30-33, 48-67, 4:8-21, 4:59-6:65, 8:36-9:10, 10:54-12:28, 13:20, figs 1A-5). Wells '634 anticipates claimed invention at least based on evidence above (sic) due to a downloading of software replacement or supplement to game device by happenstance includes to replace or supplement first graphics with second graphics, to replace or supplement first sound with second sound and game system components so as to provide features or new games or correct programming errors (1:18-65). Wells '634 discloses a gaming system and method comprising claimed features/steps including first/second graphics, first/second sound and game system components due to Wells '634 including @ 1:15-60, 3:23-26 and 30-33 stating in part 'software or firmware may be provided to replace or supplement the software or firmware in a gaming device which is in operation (in the field), e.g. features, new games and the like, and/or to correct programming errors' as well as involve changing features of a game such as upgrading or adding a bonus game or similar feature to a gaming terminal @ 11:1-3 that thereby includes first game graphics, first game sound and game system components', 'second game graphics and second game sounds' and further includes a device driver that provides communication between master gaming controller and one device

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controlled by master gaming controller including a bill validator, a coin acceptor, a card reader, a speaker or combination thereof (abstract, 1:16-41, 1:48-67, 3:23-26, 30-33, 48-67, 4:8-21, 4:49-6:65, 8:36-9:10, 10:54-12:28, 13:20, figs 1A-5, ref 128a-d, 132a-d) by happenstance of the replacement or supplemental update being downloaded. Wells '634 updates software due to monitoring use and performance @ 5:6-13 at least to provide aforementioned new bonus game(s), features, new games and/or to correct programming errors where at least correcting programming errors relates to performance. Also, an artisan would interpret Wells '634 monitoring use and performance for upgrading a gaming terminal to provide a new bonus game, new features, new games and/or correct programming errors as performing function of claims 32-46 and 49-50.

Similarly, Wells '836 incorporates by reference Wells '634 and Pease patents and thus anticipates claimed invention at least based on evidence above (sic). Further, Wells '836 discloses a method and apparatus for downloading data teaching a gaming machine (ref 112, 486) comprising: a first combination of game software components (abstract, 1:18-43, 2:53-56, 3:5-9, 3:61-4:49, 5:27-7:5, 8:50-9:16), said first combination comprising a plurality of game software components including first game graphics, first game sounds and game system components wherein the game system components comprise software modules used to provide system functions on the gaming machine (abstract, 1:18-43, 2:53-56, 3:5-9, 3:61-4:49, 5:27-7:5, 8:50-9:16, figs 1-4, ref 128a-d, 132a-d); a master gaming controller designed or configured to present a game on the gaming machine using the first combination of game software components (1:18-43, microprocessor, ref 122, 128, 1110); a network interface for communicating with a remote server and receiving game software components from said remote server and including a

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modem at least due to computer/communication boards include a modem for remote communication (abstract, 1:18-43, 2:53-56, 3:5-9, 3:61-4:49, 5:27-7:5, 8:50-9:16, fig 1A-4, ref 124); processor logic for combining game software components from said first combination with game software components received from said remote server to generate a second combination of game software components including the game system components, the second game graphics, and the second game sounds, wherein said second combination is used to present a game on the gaming machine (abstract, 1:18-43, 2:53-56, 3:5-9, 3:61-4:49, 5:27-7:5, 8:50-9:16, figs. 1-4, ref 128a-d, 132a-d), a memory storing a plurality of game software components wherein the memory is selected from the group consisting of an EPROM, a flash memory a ROM, a RAM, a CD, a DVD, a tape drive, a hard drive and a non-volatile memory (abstract, 1:18-43, 2:53-56, 3:5-9, 3:61-4:49, 8:50-9:16, figs 1A-4), wherein at least one of the plurality of game software components stored in said memory is used to generate the second combination game software components (abstract, 1:18-43, 2:53-56, 3:5-9, 5:27-7:5, 8:50-9:16, implicit game program(s) and peripherals make up components to provide game at game machine whereby to replace or update the gaming terminal software when taken as a whole as interpreted by an artisan at a time prior to invention includes updating game software/components to accommodate new games, regulatory changes, bonus game, correct bugs or other programming errors or install new features, sic), a memory storing game software version information for a plurality of game software components (abstract, 1:18-43, 2:53-56, 3:5-9, 3:61-4:49, 5:27-5, 8:50-9:16, implicit), wherein the remote server is a gaming terminal data repository (abstract, 1:18-43, 2:53-56, 3:5-9, 3:61-4:49, 5:27-7:5, 8:50-9:16, figs. 1A-4), a firewall (figs 1A-4, implicit where network includes internet for remote customer orders, as evidence only, see

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Internet Basics: 'How information travels online', 'What happens when you go online', 'Making the online connection' and 'How to download files'), wherein the game software components are selected from the group consisting of game system components, game paytables, game bonusing, game progressives, game graphics, game sounds, game jurisdiction information, game networking components (abstract, 1:18-43, 2:53-56, 3:5-9, 3:61-4:49, 5:27-7:5, 8:50-9:16, figs. 1A-4, implicit for gaming machine providing game(s) to play), wherein the network interface is a wireless network interface or a wired network interface (abstract, 1:18-43, 2:53-56, 3:5-9, 3:61-4:49, 5:27-7:5, 8:50-9:16, figs. 1A-4), wherein the network interface is configured to allow connection of the gaming machine to an internet network or an intranet network (abstract, 1:18-43, 2:53-56, 3:5-9, 3:61-4:49, 5:27-7:5, 8:50-9:16, figs. 1A-4; implicit since network for remote customer order includes internet or intranet, sic), wherein the intranet network is selected from the group consisting of a cashless system network, a progressive game network, an accounting network and a bonus game network (abstract, 1:18-43, 2:53-56, 3:5-9, 3:61-4:49, 5:27-7:5, 8:50-9:16, figs. 1A-4), wherein the game is a video bingo game, a video lottery game, a video black jack game, a video slot game, a mechanical slot game, a video poker game, a video keno game, a video pachinko game, a video game of chance and a video card game (abstract, 1:18-43, 2:53-56, 3:5-9, 3:61-4:49, 5:27-7:5, 8:50-9:16, figs. 1A-4); also, in a remote server (fig. 1A-4, ref 466, 468, 484, 488), a method of modifying game play on a plurality of gaming machines (abstract, 1:18-43, 2:53-56, 3:5-9, 3:61-4:49, 5:27-7:5, 8:50-9:16, figs. 1A-4), the method comprising monitoring game performance including coin-in of a first game played on a gaming machine (abstract, 1:18-43, 2:53-56, 3:5-9, 3:61-4:49, 5:27-7:5, 8:50-9:16, figs. 1A-4), checking at least one update trigger wherein the at least one update trigger comprises a game event, a game

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performance event, a player input or a combination thereof that by happenstance adding a new [bonus/progressive] game, repairing, updating for regulatory requirement, correcting bugs or other programming errors relate to game performance (abstract, 1:18-43, 2:53-56, 3:5-9, 3:61-4:49, 5:27-7:5, 8:50-9:16, figs. 1A-4), determining that a configuration update has been triggered based upon at least the update triggers and the game performance of the first game (abstract, 1:18-43, 2:53-56, 3:5-9, 3:61-4:49, 5:27-7:5, 8:50-9:16, figs. 1A-4); establishing communications with the gaming machine (abstract, 1:18-43, 2:53-56, 3:5-9, 3:61-4:49, 6:21-24, 6:39-7:5, 8:50-9:16, figs. 1A-4); when the configuration update has been triggered, identifying one or more game software components for the configuration update on the gaming machine (abstract, 1:18-43, 2:53-56, 3:5-9, 3:61-4:49, 5:27-7:5, 8:50-9:16, figs. 1A-4); bundling the game software components (abstract, 1:18-43, 2:53-56, 3:5-9, 3:61-4:49, 6:21-24, 6:39-7:5, 7:16-35, 8:50-9:16, figs. 1A-4 where discussion of downloading information or data in block fashion is bundling of the data/information to be downloaded, as evidence only under MPEP 2131.01 see Internet Basics: 'How information travels online', 'What happens when you go online', 'Making the online connection' and 'How to download files'), and sending the game software components to the gaming machine wherein said game software components are used to present a game on the gaming machine (abstract, 1:18-43, 2:53-56, 3:5-9, 3:61-4:49, 5:27-7:5, 8:50-9:16, figs. 1A-4); further comprising prior to sending the game software components, contacting a local ISP and sending the game software components via the local ISP (abstract, 1:18-43, 2:53-56, 3:5-9, 3:61-4:49, 5:27-7:5, 8:50-9:16, figs. 1A-4, implicit where network includes internet, noteworthy is remote customer order over network that further suggests internet), looking up an IP address of said one or more gaming machines (abstract, 1:18-43, 2:53-56, 3:5-9, 3:61-4:49, 5:27-7:5, 8:50-

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9:16, figs. 1A-4, implicit use of TCP/IP protocol and address of game machine for identification in communication over network), encapsulating said game software components in multiple information packets (refer to data blocks and bundling above), encrypting said game software components (implicit for communicating to an existing machine over network for security, abstract, 1:18-43, 2:53-56, 3:5-9, 3:61-4:49, 5:27-7:5, 8:50-9:16, figs. 1A-4), generating instructions for configuring the game software components and sending said instructions with said game software components (8:50-9:16, descriptor file is instruction, implicit, program includes remarks as instructions in readme file, as evidence only under MPEP 2131.01 see documentation section in Internet Basics: 'How to download files' or, see Marron 5359730, abstract; programs typically include such remarks/instruction for guidance of use or of changes in update/patch notes that is hornbook engineering for programming a change/update as to be implicitly included), requesting game software component version information from the gaming machines and receiving the game software component version information from the gaming machine (abstract, 1:18-43, 2:53-56, 3:5-9, 3:61-4:49, 6:21-24, 6:39-7:5, 7:54-67, 8:16-25, 8:50-9:16, figs. 1A-4), receiving game transaction information from the gaming machines and storing said game transaction information (4:21-27), storing said game transaction information according to one or more game data categories wherein the game data categories are selected from the group consisting of game version data, game data, gaming terminal data, player data, route data and venue data (implicit, requirement for tracking game or credit activity according to credit or game type, basic accounting practice), prior to storing said game transaction information, determining access privileges for said game transaction information (implicit as required for credit tracking that entails setting access rights, as evidence only see Pease 5326104

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at 18:4-6, 58-63, 19:32-45, 21:15-22:3, 25:29-33, 28:13-31:43), prior to storing said game transaction information, performing one or more operations on said game transaction information (4:21-27, implicit, as per requirement for tracking credit or game play activity so as to associate credit with game played and sum new value with prior value as basic accounting), determining a data storage partition from among a plurality of data storage partitions for storing said gaming transaction information wherein the plurality of data storage partitions correspond to a plurality of gaming entities where the plurality of gaming entities is players such as for player tracking for compensation in a loyalty program (4:21-27, as evidence only under MPEP 2131.01 regarding partitioning accounting data for player tracking in a loyalty program see either Acres 5655961 or Boushy 5761647); further in a gaming machine (ref 112), a method of updating game software components (abstract, 1:18-43, 2:53-56, 3:5-9, 3:61-4:49, 6:21-24, 6:39-7:5, 8:50-9:16, figs. 1A-4), the method comprising generating a game play on the gaming machine using a first combination of game software components, said first combination of game software components including first game graphics, first game sounds and game system components, wherein the game system components comprise software modules used to provide system functions on the gaming machine (abstract, 1:18-43, 2:53-56, 3:5-9, 3:61-4:49, 6:21-24, 6:39-7:5, 8:50-9:16, figs. 1A-4) establishing communications with a remote server (abstract, 1:18-43, 2:53-56, 3:5-9, 3:61-4:49, 6:21-24, 6:39-7:5, 8:50-9:16, figs. 1A-4); receiving one or more game software components from said remote server including second game graphics and second game sounds (abstract, 1:18-43, 2:53-56, 3:5-9, 3:61-4:49, 6:21-24, 6:39-7:5, 7:54-67, 8:16-25, 8:50-9:16, figs. 1A-4); unbundling said game software components (abstract, 1:18-43, 2:53-56, 3:5-9, 3:61-4:49, 6:21-24, 6:39-7:5, 7:54-67, 8:16-25, 8:50-9:16, figs. 1A-4 and discussion throughout

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regarding transmitting data in block fashion that data block is unbundled at receiving gaming machine, as evidence only under MPEP 2131.01 see Internet Basics: 'How information travels online', 'What happens when you go online', 'Making the online connection' and 'How to download files'), generating a second combination of game software components wherein said second combination of game software components comprises game software components from said first combination including the game system components and the game software components received from said remote server including the second game graphics and the second game sounds by happenstance of adding a new [bonus/progressive] game, new content, repairing, updating, correcting bugs or other programming errors or complying with regulatory requirement (abstract, 1:18-43, 2:53-56, 3:5-9, 3:61-4:49, 6:21-24, 6:39-7:5, 7:54-67, 8:16-25, 8:50-9:16, figs. 1A-4), and presenting a game play using the second combination of game software components (abstract, 1:18-43, 2:53-56, 3:5-9, 3:61-4:49, 6:21-24, 6:39-7:5, 7:54-67, 8:16-25, 8:50-9:16, figs. 1A-4). Wells '836 discloses a gaming machine, method teaching claimed invention including first/second graphics, first/second sound and game system components due to Wells including @ 1:18-65 stating in part 'software or firmware may be provided to replace or supplement the software or firmware in a gaming device which is in operation (in the field), e.g. features, new games and the like, and/or to correct programming errors' that thereby includes first game graphics, first game sound and game system components', 'second game graphics and second game sounds' by happenstance of the replacement or supplemental update being downloaded

Wells '585 incorporates by reference Wells '836 and Pease patents and thus anticipates claimed invention at least based on evidence above (supra) due to a software replacement or

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supplement to game device by happenstance includes first/second graphics, first/second sound and game system components to replace or supplement by providing features, new games or correct programming errors (1:15-60).

In addition, Wells ('836, '585, '634) teaches first/second graphics, first/second sounds and game system components, as noted in evidence in holding above as incorporated herein, to update, repair, replace or supplement the configuration of a gaming machine to add new features, implement new games and/or to correct bugs or other programming errors includes repairs, updates, replacement or correcting of programming errors for peripherals such as money handler, card reader to protect against fraud or display driver for improved graphics that in light of revising theme of a gaming device for another casino/affiliated entity, clearly includes such alteration of game graphics and sounds and updating money handler/card reader to reduce fraud that by happenstance teaches claimed game software components including first/second game graphics, first/second game sounds and game system components (ref 128a-d, 132a-d).

Also, Wells ('836, '585, '634) teaches to enable a second game based in part on performance data of first game, as noted in evidence in holding above as incorporated herein, monitoring use and performance of each gaming machine so as to reprogram terminals to accommodate new games, new regulatory changes correct bugs or other programming errors install new features and the like that when taken in consideration of casinos update or replace games that use data show is not being played to warrant being maintained since a non-productive or under-used game on a casino floor is lost opportunity revenue for the profit oriented business. Also, correcting a programming error including bugs is performance of the game as claimed where the second game is corrected version of first game at least since there is no claimed

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requirement that the first and second game differ in any particular function of game play or type, visually or audibly.

Regarding 'wherein the game system components comprise software modules used to provide system functions on the gaming machine' and 'game system components', Wells ('836, '585, '634) teaches such optional function by happenstance for adding a new [bonus/progressive] game, repairing, updating for regulatory requirement, correcting bugs or other programming errors including for peripherals such as money handler or card reader to detect fraud or other peripheral including a display driver for improved graphics as evidence therein shows where the second game is corrected version of first game at least since there is no claimed requirement that the first and second game differ in any particular function of game play or type, visually or audibly as would be interpreted by an artisan at time prior to invention.

Regarding checking at least one update trigger (claim 32 as amended), the language pertains to function from canceled claims 47-48 that was shown in evidence in holding that Wells ('836, '585, '634) teaches the process for monitoring game performance including coin in of first game played on a gaming machine checking at least one update trigger wherein the at least one update trigger is a game event, a game performance event and a player input or a combination thereof that by happenstance adding a new game, repairing, updating for regulatory requirement, correcting bugs relate to game performance (abstract, 1:16-41, 1:48-67, 3:23-26, 30-33, 48-67, 4:1-21, 4:49-6:65, 8:36-9:10, 10:54-12:28, 13:20, figs 1A-5) and by happenstance for adding a new [bonus/progressive] game, repairing, updating for regulatory requirement, correcting bugs or other programming errors including a device driver for peripherals such as money handler or card reader to detect fraud or other peripheral including a display driver for

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improved graphics (128a-d, 132a-d) as evidence therein shows where the second game is corrected version of first game at least since there is no claimed requirement that the first and second game differ in any particular function of game play, type, visually or audibly, as would be interpreted by an artisan at time prior to invention.

7. Claims 32, 40-42, 44, and 49-50 are rejected under 35 U.S.C. 102(e) as being anticipated by Joshi (6939226). This holding is maintained from prior action for cited claims as amended. Response to arguments is provided below and incorporated herein. Claim 42 was previously treated in prior action on page 18 at bottom therein. Joshi also discloses in a remote server (abstract, 1:56-2:51, fig. 1-17), a method of modifying game play on a plurality of gaming machines (abstract, 1:56-2:51, 9:9-15:43, figs 1-18B), comprising monitoring game performance including coin-in of a first game played on a gaming machine (abstract, 1:56-2:51, 9:9-15:43, figs 1-17), checking at least one update trigger wherein the at least one update trigger is a game event, a game performance event, a player input or a combination thereof where by happenstance the determined favorite being game performance event or where claimed optional triggers fail to patentably distinguish as being equivalent to trigger taught by Joshi therein (abstract, 1:56-2:51, 9:9-15:43, figs 1-17), determining that a configuration update has been triggered based upon at least the updated triggers and the game performance of the first game (abstract, 1:56-2:51, 9:9-15:43, figs 1-17), establishing communications with the gaming machine (abstract, 1:56-2:51, 9:9-15:43, figs 1-17), when the configuration update has been triggered, identifying one or more game software components for the configuration update on the gaming machine that enables a second game to be played on the gaming machine in so far as changing theme and/or pay table alters game to be a second game (abstract, 1:56-2:51, 9:9-15:43, figs 1-18B), bundling the game

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software components (abstract, 1:56-2:51, 9:9-15:43, figs 1-17; as evidence only under MPEP 2131.01 see Internet Basics: 'How information travels online', 'What happens when you go online', 'Making the online connection' and 'How to download files'), sending the game software components to the gaming machine wherein said game software components are used to present a game on the gaming machine (abstract, 1:56-2:51, 9:9-15:43, figs 1-17), receiving game transaction information from the gaming machines and storing said game transaction information (abstract, 1:56-2:51, 9:9-15:43, figs 1-17), storing said game transaction information according to one or more game data categories wherein the game data categories are selected from the group consisting of game version data, game data, gaming terminal data, player data, route data and venue data (abstract, 1:56-2:51, 9:9-15:43, figs 1-17; implicit, requirement for tracking credit or game play activity), prior to storing said game transaction information, performing one or more operations on said game transaction information (abstract, 1:56-2:51, 9:9-15:43, figs 1-17; general accounting of transactions), wherein the game software components are selected from the group consisting of game system components, game paytables, game bonusing, game progressives, game graphics, game sounds, game jurisdiction information, game networking components (abstract, 1:56-2:51, 9:9-15:43, figs 1-17), wherein the game is a video bingo game, a video lottery game, a video black jack game, a video slot game, a mechanical slot game, a video poker game, a video keno game, a video pachinko game, a video game of chance and a video card game (abstract, 1:56-2:51, 9:9-15:43, figs 1-17).

Claim Rejections - 35 USC § 103

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

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claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 19-22, 24, 26-31, 61, 63-66 and 71-72 are rejected under 35 U.S.C. 102(e) as being anticipated by Joshi (6939226) or, in the alternative, under 35 U.S.C. 103(a) as obvious over Joshi in view of Pease (5759102). This holding is maintained from prior action for cited claims as amended. Response to arguments is provided below and incorporated herein.

Joshi discloses a gaming machine and method for updating gaming machine to provide thematic seasonal, holiday or other societal event and/or sounds and/or adjusting paytables based on performance of gaming machine or time (abstract, 1:56-2:51, figs 1-17) comprising a first combination of game software components (abstract, 1:56-2:51, 9:9-15:43, figs 1-17), said first combination comprising a plurality of game software components including first game graphics, first game sounds and game system components wherein the game system components comprise software modules used to provide system functions on the gaming machine by happenstance is a display driver or money handler (abstract, 1:56-2:51, 9:9-15:43, figs 1-18B, ref 12, 14, 16-17), a master gaming controller designed or configured to present a game on the gaming machine using the first combination of game software components (abstract, 1:56-2:51, 9:9-15:43, figs 1-17, ref 152), a network interface for communicating with a remote server and receiving game software components from said remote server including second game graphics and second game sounds (abstract, 1:56-2:51, 9:9-15:43, figs 1-17), processor logic for combining game software

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components from said first combination including the game system components with game software components received from said remote server to generate a second combination of game software components including the game system components, the second game graphics and the second game sounds wherein said second combination is used to present a game on the gaming machine (abstract, 1:56-2:51, 9:9-15:43, figs 1-18B, ref 12, 14, 16-17), a memory storing a plurality of game software components wherein the memory is selected from the group consisting of an EPROM, a flash memory a ROM, a RAM, a CD, a DVD, a tape drive, a hard drive and a non-volatile memory (abstract, 1:56-2:51, 4:29-36, 9:9-15:43, figs 1-17, ref 152), wherein at least one of the plurality of game software components stored in said memory is used to generate the second combination game software components (abstract, 1:56-2:51, 9:9-15:43, figs 1-17), wherein the remote server is a gaming terminal data repository (ref 152), wherein the game software components are selected from the group consisting of game system components, game paytables, game bonusing, game progressives, game graphics, game sounds, game jurisdiction information, game networking components (abstract, 1:56-2:51, 9:9-15:43, figs 1-17), wherein the network interface is a wireless network interface or a wired network interface (abstract, 1:56-2:51, 9:9-15:43, figs 1-17), wherein the network interface is configured to allow connection of the gaming machine to an internet network or an intranet network where LAN is an intranet (abstract, 1:56-2:51, 9:9-15:43, figs 1-17), wherein the intranet network is selected from the group consisting of a cashless system network, a progressive game network, an accounting network and a bonus game network (abstract, 1:56-2:51, 9:9-15:43, figs 1-17), wherein the game is a video bingo game, a video lottery game, a video black jack game, a video slot game, a mechanical slot game, a video poker game, a video keno game, a video pachinko

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game, a video game of chance and a video card game (abstract, 1:56-2:51, 9:9-15:43, figs 1-17), a modem (abstract, 1:56-2:51, 9:9-15:43, figs 1-17; as evidence only per MPEP 2131.01, see definition of WAN from wikipedia.com regarding computer networking and see Internet Basics: 'How information travels online', 'What happens when you go online', 'Making the online connection' and 'How to download files', essentially, communicating remote between server and gaming machine includes a modem by happenstance of use for network communication).

Joshi also teaches in a gaming machine (ref 10), a method of updating game software components (fig 1-2), the method comprising generating a game play on the gaming machine using a first combination of game software components, said first combination of software components including first game graphics, first game sounds and game system components wherein the game system components comprise software modules used to provide system functions on the gaming machine (abstract, 1:56-2:51, 9:9-15:43, figs 1-18B, ref 12, 14, 16-17), establishing communications with a remote server (figs 17), receiving game software components from said remote server including second game graphics and second game sounds (abstract, 1:56-2:51, 9:9-15:43, figs 1-17), unbundling said one or more game software components (abstract, 1:56-2:51, 9:9-15:43, figs 1-17; as evidence only under MPEP 2131.01 see Internet Basics: 'How information travels online', 'What happens when you go online', 'Making the online connection' and 'How to download files'), generating a second combination of game software components wherein said second combination of game software components comprises game software components from said first combination including game system components and the game software components received from said remote server including the second game graphics and second game sounds (abstract, 1:56-2:51, 9:9-15:43, figs 1-17), and presenting a

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game play using the second combination of game software components (abstract, 1:56-2:51, 9:9-15:43, figs 1-17). Essentially, the claimed invention fails to preclude downloading of software components as taught by Joshi for updating gaming terminal for thematic, seasonal, holiday or other societal event and/or sounds and/or adjusting paytables based on timing or game use.

In the alternative, where Joshi lacks wherein the game system components comprise software modules used to provide system functions on the gaming machine', 'game system components' [the Office disagrees for reasons shown in evidence above since the optional function does not state a condition that is material to patentability as noted in evidence above]. However, further, in a related reference, Assignee admits in background of Pease '102 (1:11-2:27) updating peripheral device drivers such as money handler, display or card reader to accommodate new games, regulatory changes, correct bugs or other programming errors, install new features and the like and where claims do not require automatic combining or changing or replacing such that the scope includes or at least fails to preclude manual update by a portable device with a communication link where the portable device acts as a remote master gaming controller thereby where by happenstance a system such as Joshi likewise performs claimed function at least manually as admitted by assignee as in evidence in Pease where an inventor needs only disclose material which is new and need not disclose material that is old or conventional. Such is the case here regarding Joshi includes wherein the game system components comprise software modules used to provide system functions on the gaming machine' and 'game system components' in manner as broadly claimed. Alternatively, Pease discloses a peripheral device download method teaching wherein the game system components comprise software modules used to provide system functions on the gaming machine' and 'game

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system components' such as money handler, communication module, display or card reader (abstract, 2:30-3:7, 3:22-5:67, figs 1-2, ref 114a, 122a-f). Pease is relevant prior art either for being in the field of applicant's endeavor or, for being reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). The level of ordinary skill is as represented by cited references. Thus, per decision in KSR, it would have been obvious to an artisan at a time prior to the invention to substitute one method (automated remote reprogramming of peripheral as in Pease) for the other (manual update of peripheral via communication link as conventional as admitted by assignee where Joshi performs such updates manually) for the predictable result of less labor intensive and less costly updating of peripheral devices. Alternatively, it would have been obvious to an artisan at a time prior to the invention to apply the process of wherein the game system components comprise software modules used to provide system functions on the gaming machine' and 'game system components' as taught by Pease to improve the gaming machine and method of Joshi for the predictable result of automated remote reprogramming peripherals that is less labor intensive and less costly. Joshi or Joshi in view of Pease teaches same structure performing same function for same purpose.

Finally, Joshi includes wherein the gaming system components comprise a device driver that provides communication between master gaming controller and at least one device controlled by the master gaming controller including a bill validator, a coin acceptor, a card reader, a speaker or a combination thereof (abstract, 1:56-2:51, 9:9-15:43, figs 1-18B, ref 12, 14, 16-17). As further evidence thereto under MPEP 2131.01, regarding updating a device driver

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such as a peripheral money handler, display, or card reader, see Assignee admitted prior art in Pease '102 (@ 1:11-2:2:27) as stated above in that reprogram of peripheral device (driver) to accommodate new games, regulatory changes, correct bugs or other programming errors and install new features where by happenstance Joshi likewise performs at least manually as admitted by assignee as in evidence in Pease where an inventor needs only disclose material which is new and need not disclose material that is old or conventional. Such is the case here regarding Joshi for game system components comprise a device driver in manner as broadly claimed. Further, alternatively, Pease discloses a peripheral download method and apparatus teaching wherein the gaming system components comprise a device driver that provides communication between master gaming controller and at least one device controlled by the master gaming controller including a bill validator, a coin acceptor, a card reader, a speaker or a combination thereof (abstract, 2:30-3:7, 3:22-5:16, figs 1-2). Evidence for reasons to combine and showing Pease is relevant prior art is as stated above with consideration of decision under KSR. Thus, per decision in KSR, it would have been obvious to an artisan at a time prior to the invention to apply the process of wherein the game system components comprise a device driver that provides for communication between master gaming controller and at least one device controlled by master gaming controller as taught by Pease to improve the gaming machine and method of Joshi for the predictable result of automated remote reprogramming peripherals that is less labor intensive and less costly.

10. Claims 23, 38-39, and 62 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Joshi in view of Alderson (5019963), Fawcett (5845077) or Halliwell (5473772) or, in the alternative, over Joshi in view of Pease as applied to claims 19, 32 and 61 above, and further in

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view of Alderson (5019963), Fawcett (5845077) or Halliwell (5473772). Joshi or Joshi in view of Pease discloses a download method and apparatus teaching claimed features/steps (*supra*) but lacks storing game software component version information (clm 23), requesting game software game component version information from the gaming machines (clm 38), receiving game software component version information from the gaming machine (clm 39), and sending the game software component information to remote server (clm 62). Configuration management of software version is notoriously well known so as to ensure compliance with requirements as well as to ensure knowledge regarding configuration/version of software being used. In related references, Alderson (abstract), Fawcett (abstract), and Halliwell (abstract) each disclose a server in network communication with a computer to update software based on a check by server from version information of an application is received by server as sent from computer that the version of the application requires updating that teaches/suggests providing version information of an application to a remote server to check against a listing to determine whether a newer version exists for remote file maintenance based on identifying an out of date version. Joshi teaches the remote update of game software or game component software (sic) Aldersen, Fawcett and Halliwell is relevant prior art either for being in the field of applicant's endeavor or, for being reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). The level of ordinary skill is as represented by cited references. Therefore, it would have been obvious to an artisan at a time prior to the invention to apply the process of storing game software component version information, requesting game software game component version information from the gaming machines,

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receiving game software component version information from the gaming machine, and sending the game software component information to remote server as taught by either Alderson or Fawcett or Halliwell to improve the gaming machine, or method of Joshi or Joshi in view of Pease for the predictable result of providing automated configuration control. Assignee admits configuration management or updating of software components of gaming machine from remote server/terminal was known; as evidence see Wells 6805634 @ 1:15-3:33. Joshi in view of Pease and further Aldersen, Fawcett or Halliwell suggests to an artisan the same structure performing same function for same purpose.

11. Claim 25 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Joshi in view of O'Conner (6178510) or Johnson (5923885) or, in the alternative, over Joshi in view of Pease as applied to claims 19 above, and further in view of O'Conner (6178510) or Johnson (5923885). Joshi or Joshi in view of Pease discloses features/steps of claimed invention but lacks firewall where WAN is internet. In related references, O'Conner (abstract, 7:8-13) and Johnson (abstract, 5:63-6:5) each disclose network communication between remote server and a computer for software distribution using a firewall for added security of network resources. O'Conner and Johnson is each relevant prior art either for being in the field of applicant's endeavor or, for being reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). The level of ordinary skill is as represented by cited references. Therefore, it would have been obvious to an artisan at a time prior to the invention to apply the process of a firewall as taught by either O'Conner or Johnson to improve the gaming machine and method of Joshi or Joshi in view of Pease for the predictable result of

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improved security of network resources. Joshi in view of Pease and further O'Conner or Johnson suggests to an artisan the same structure performing same function for same purpose.

12. Claims 33-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Joshi in view of Wells (6805634) or, in the alternative, over Joshi in view of Pease as applied to claim 32 above, and further in view of Wells ('634). Joshi or Joshi in view of Pease discloses steps of claimed invention (sic) but lacks prior to sending the game software components, contacting a local ISP and sending the game software components via the local ISP (clm 33), looking up an IP address of said one or more gaming machines (clm 34), encapsulating said game software components in multiple information packets (clm 35), encrypting said game software components (clm 36) and generating instructions for configuring the game software components and sending said instructions with said game software components (clm 37) at least since as best understood Joshi pertains to updating software components over a LAN rather than over WAN such as internet. However, in a related reference, as discussed above incorporated herein, Wells discloses a gaming machine and method (abstract, 1:16-3:45, 3:48-4:21, 6:63-65, 10:54-11:4, 13:20, figs 1A-5) that provides updates of software components over a WAN such as internet teaching prior to sending the game software components, contacting a local ISP and sending the game software components via the local ISP, looking up an IP address of said one or more gaming machines, encapsulating said game software components in multiple information packets (refer to data blocks and bundling above), encrypting said game software components and generating instructions for configuring the game software components and sending said instructions with said game software components. Assignee admits in background of Wells (1:16-3:45, fig 1) a process of updating that suggests claimed process and further Wells also

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incorporates by reference Pease '102. Pease '102 further teaches as shown in evidence therein regarding downloading in block wise fashion regarding encapsulating said game software components in multiple information packets, encrypting said game software components and generating instructions for configuring the game software components and sending said instructions with said game software components. Pease and Wells is relevant prior art either for being in the field of applicant's endeavor or, for being reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). The level of ordinary skill is as represented by cited references. Therefore, it would have been obvious to an artisan at a time prior to the invention to apply the process of prior to sending the game software components, contacting a local ISP and sending the game software components via the local ISP, looking up an IP address of said one or more gaming machines, encapsulating said game software components in multiple information packets (refer to data blocks and bundling above), encrypting said game software components and generating instructions for configuring the game software components and sending said instructions with said game software components as taught by Wells or Pease to improve the gaming machine and method of Joshi for the predictable result of providing remote secure updates over WAN. Above discussion regarding communication over internet from Internet Basics is further evidence under MPEP 2131.01 regarding such process of contacting a local ISP, sending components via ISP, looking up an IP address and sending components via ISP as packets or block wise fashion of transmittal. Same structure performing same function for same purpose.

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13. Claims 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Joshi in view of Fawcett (5845077) or Internet Basics or, in the alternative, over Joshi in view of Pease as applied to claim 32 above, and further in view of Fawcett (5845077) or Internet Basics. Joshi or Joshi in view of Pease discloses features/steps of claimed invention (sic) but lacks prior to sending the game software components, contacting a local ISP and sending the game software components via the local ISP (clm 33) and looking up an IP address of said one or more gaming machines (clm 34) at least since Joshi or Joshi in view of Pease appears to pertain to update software components over a LAN rather than over WAN such as internet. In a related reference, Fawcett discloses a gaming machine and method (abstract, 2:10-3:43, 5:29-6:49, figs 1-5) that provides updates of software components over a WAN such as internet teaching prior to sending the game software components, contacting a local ISP, sending the game software components via the local ISP, looking up an IP address of said one or more gaming machines, encapsulating said game software components in multiple information packets (refer to data blocks and bundling above). Likewise, Internet Basics discloses process for downloading over internet ('How information travels online', 'What happens when you go online', 'Making the online connection' and 'How to download files') that includes prior to sending the game software components, contacting a local ISP and sending the game software components via the local ISP and looking up an IP address of said one or more gaming machines. Fawcett and Internet Basics is each relevant prior art either for being in the field of applicant's endeavor or, for being reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). The level of ordinary skill is as represented by

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cited references. Therefore, it would have been obvious to an artisan at a time prior to the invention to apply the process of prior to sending the game software components, contacting a local ISP and sending the game software components via the local ISP and looking up an IP address of said one or more gaming machines as taught by Fawcett or Internet Basics to improve the gaming machine and method of Joshi or Joshi in view of Pease for the predictable result of providing remote secure updates over WAN so as to increase size of network (see Networking from wikipedia) and thereby extend utility of process.

14. Claims 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Joshi in view of Internet Basics, Schneier (5768382) and Wiltshire (6409602) or, in the alternative, over Joshi in view of Pease as applied to claim 32 above, and further in view of Internet Basics, Schneier (5768382) and Wiltshire (6409602). Joshi or Joshi in view of Pease discloses a method comprising claimed steps/features (supra) but lacks encapsulating said game software components in multiple information packets (clm 35), encrypting said game software components (clm 36) and generating instructions for configuring the game software components and sending said instructions with said game software components (clm 37) since Joshi appears to pertain to a LAN rather than internet/WAN and lacks discussing transmitting the components in blocks. In related references, Wiltshire discloses playing and transparent upgrades via multiple threading to computer gaming programs and associated paytables over internet/WAN (abstract, 2:22-3:36:7-7:56, figs 1A-9D); while, Schneier discloses play of any network and encrypting to increase security (abstract, 3:66-4:20, 5:29-8:41, 11:25-12:5, 17:64-18:30). Communication over internet includes encapsulating into packets and providing instruction includes providing instructional remarks, as evidence under MPEP 2131.01 see Internet Basics

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(‘How information travels online’, ‘What happens when you go online’, ‘Making the online connection’ and ‘How to download files’). Pease ‘102 further discloses downloading in block-wise fashion updates, new features/games, corrections of bugs to peripherals (*supra*) that would be interpreted by an artisan as teaching encapsulating said game software components in multiple information packets, encrypting said game software components and generating instructions for configuring the game software components and sending said instructions with said game software components (*supra*). Internet Basics, Pease, Schneier and Wiltshire is each relevant prior art either for being in the field of applicant’s endeavor or, for being reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). The level of ordinary skill is as represented by cited references. Therefore, it would have been obvious to an artisan at a time prior to the invention to apply the process of encapsulating said game software components in multiple information packets, encrypting said game software components and generating instructions for configuring the game software components and sending said instructions with said game software components as suggested by Internet Basics, Pease, Schneier and Wiltshire to improve the method of Joshi for the predictable result of secure transparent internet modification and upgrades.

15. Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Joshi in view of Pease (5326104). This holding is maintained from prior action for cited claims as amended. Response to arguments is provided below and incorporated herein. Joshi discloses a method comprising claimed steps/features (*supra*) but lacks prior to storing said game transaction information, determining access privileges for said game transaction information. In a related

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reference, Pease '104 discloses a method that entails setting access rights (18:4-6, 58-63, 19:32-45, 21:15-22:3, 25:29-33, 28:13-31:43). Pease '104 is relevant prior art either for being in the field of applicant's endeavor or, for being reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). The level of ordinary skill is as represented by cited references. Therefore, it would have been obvious to an artisan at a time prior to the invention to apply the process of prior to storing said game transaction information, determining access privileges for said game transaction information as taught by Pease to improve the process of Joshi for the predictable result of improved security by access rights. Essentially, the combination when taken as a whole at a time prior to invention suggests claimed process in a remote server.

16. Claims 45-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Joshi in view of Boushy (5761647). This holding is maintained from prior action for cited claims as amended. Response to arguments is provided below and incorporated herein. Joshi discloses a method comprising claimed steps/features (*supra*) but lacks determining a data storage partition from among a plurality of data storage partitions for storing said gaming transaction information wherein the plurality of data storage partitions correspond to a plurality of gaming entities where the plurality of gaming entities is players such as for player tracking for compensation in a loyalty program. However in a related reference, Boushy discloses a data storage partition based on multiple affiliate casinos linked in a player tracking promotion (2:5-3:30, figs 1-12). Boushy is relevant prior art either for being in the field of applicant's endeavor or, for being reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied

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upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). The level of ordinary skill is as represented by cited references. Therefore, it would have been obvious to an artisan at a time prior to the invention to apply the process of determining a data storage partition from among a plurality of data storage partitions for storing said gaming transaction information wherein the plurality of data storage partitions correspond to a plurality of gaming entities where the plurality of gaming entities is players such as for player tracking for compensation in a loyalty program as taught by Boushy to improve the method of Joshi for the predictable result of partitioning based upon affiliated gaming entities.

Response to Arguments

17. Applicant's arguments filed 9/28/09 have been fully considered but they are not persuasive. First, it is noted that Counsel/Applicant failed to address all issues since there is no discussion regarding anticipation by Wells in paragraph 4 thus submission was deficient under 37 CFR 1.111. However, as a service to Applicant, the Office has treated the merits.

In response to Applicant's arguments on page 8-9 regarding claims 19 and 61 that Joshi lacks the optional amended function relating to wherein the game system components comprise software modules used to provide system functions on the gaming machine and including gaming system components, the Office disagrees since the language fails to state a condition material to patentability in that the reference includes such game software components having software modules used to provide system functions of money handling, display driver, audio, payout structure, network communication (figs 1-18B. ref 128a-d, 132a-d) as would be interpreted by an artisan. MPEP 2111.04. Also, contrary to Counsel/Applicant opine, evidence shows in holding above that Assignee admits in background in Pease '102 remote updating of

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peripherals to reprogram peripheral devices to accommodate new games, regulatory changes, correct bugs or other programming errors, install new features; that an artisan would interpret that Joshi similarly includes such updating of peripherals thereby performing same function with same structure for same purpose. In the alternative, Pease (1:11-2:27, 2:30-3:7) teaches claimed optional function in manner claimed to reprogram peripheral devices to accommodate new games, regulatory changes, correct bugs or other programming errors, install new features that includes money handler, display driver, card reader and/or communication module as in evidence therein such that the combination of Joshi with Pease suggests to an artisan when taken as a whole at a time prior to the invention a gaming machine and method performing claimed process including wherein the game system components comprise software modules used to provide system functions on the gaming machine and including gaming system components for same purpose.

In reply to argument on page 9 regarding claim 32 that Joshi lacks steps checking at least one update trigger, wherein the at least one update trigger comprises a game event, a game performance event, a player event or a combination thereof, the Office disagrees since contrary to Applicant/Counsel opine, Joshi teaches all claimed steps as in evidence in holding above including providing intermittent or continuous updating based on game performance or player input, when the configuration update has been triggered, identifying one or more game software components for the configuration update on the gaming machine that enable a second game to be played on the gaming machine (abstract, 1:56-2:51, 11:22-15:43, figs 1-18B) thereby performing same function using same structure for same purpose.

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In reply to remark on page 9 bottom that claims 20-31, 62-66, 71-72 (as renumbered), 33-46 and 49-50 are patentable due to their dependence on claims 19, 32 and 61, the Office disagrees for reasons stated above with respect to claims 19, 32 and 61 and incorporates the discussion above regarding those claims herein. Evidence in holding above further shows subject matter of claims 20-31, 62-66, 71-72 (as renumbered), 33-46 and 49-50 fails to patentably distinguish over art when considered as a whole by an artisan at time prior to invention.

Conclusion

18. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

19. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Sager whose telephone number is 571-272-4454. The examiner can normally be reached on T-F, 0700-1730 hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on 571-272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. Sager/
Primary Examiner, Art Unit 3714